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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 358

HOOPESTON CANNING CO., E. PRITCHARD, INC., ET AL.,

Appellants,

vs.

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

JOHN J. BENNETT, JR.,
Attorney General of New York;
HENRY EPSTEIN,
Solicitor General of New York;
MILTON KAPLAN,
Assistant Attorney General of New York,
Counsel for Appellees.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 358

HOOPESTON CANNING CO., A CORPORATION; E. PRITCHARD, INC., A CORPORATION; LANSING B. WARNER, INCORPORATED, A CORPORATION; HARRY M. BROWN AND JAMES T. SMITH, PAUL E. EMERSON AND BEN A. MORTON,

Plaintiffs-Appellants,

against

LOUIS H. PINK, AS SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AND JOHN J. BENNETT, JR., AS ATTORNEY-GENERAL OF THE STATE OF NEW YORK,

Defendants-Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

May it please the Court:

Now come the appellees in the above entitled cause, by their counsel of record, and move that the appeal herein be

dismissed, or that the order and judgment appealed from be affirmed.

Statement.

This is an appeal from an order and judgment of the Court of Appeals of the State of New York, and from the final order and judgment of the Supreme Court of the State of New York, Albany County, entered thereon, dismissing the above consolidated actions for a declaratory judgment.

Plaintiffs represent two groups of foreign reciprocal insurers authorized to transact the business of insurance in New York State. The facts are too lengthy for repetition here. They are fully set forth in the opinion of the Court of Appeals of the State of New York, a copy of which is attached as Exhibit H to Appellants' Jurisdictional Statement.

Issues Before the State Courts.

Copies of the opinions of the Supreme Court (Trial Term), Albany County, the Appellate Division of the Supreme Court, Third Department, and the Court of Appeals are attached as exhibits to Appellants' Jurisdictional Statement (Exhibits A, D, H). They reveal that the principal issue before the Courts below was whether the two groups of reciprocals were engaged in the business of insurance in New York State. The Court of Appeals, with a unanimous decision, upheld findings of fact of the Trial Court from which the conclusion necessarily follows that the plaintiff reciprocals are doing business in the State of New York, and that consequently a basis exists for their regulation (Exhibit H, Appellants' Jurisdictional Statement; 288 N. Y. 291, 299 [1942]). Aside from consideration of the findings of fact of the Trial Court both that Court and the Court of Appeals deemed it significant that the plaintiff companies have been licensed to do business

in New York State since 1930 and have submitted to regulation therein until the time these actions were instituted.

Secondly, the Court of Appeals held applicable and valid the various sections of the Insurance Law of the State of New York involved (288 N. Y. 291, 302). These statutory regulations apply alike to domestic and foreign authorized companies. Plaintiffs urged that at least one section (§ 130) could not be construed to embrace plaintiffs' local business activities; that these statutes interfered with their freedom of contract outside of New York State; that as applied to their type of business the New York State regulations were unreasonable and violative of the due process clause of the Fourteenth Amendment; and that certain sections were discriminatory, offending the equal protection clause of said amendment [§ 412(1), § 418(1), § 417(1)].

ARGUMENT.

The findings of fact of the New York State Courts established that plaintiffs' insurance coverage of New York State risks involve a substantial degree of local activity, and that their transactions in this State are continuous and voluminous. It is not the function of this Court to inquire into those findings or review the weight of evidence.

Whitney v. *California*, 274 U. S. 357, 367 (1927). From those findings it follows that the Legislature of the State of New York has jurisdiction to regulate plaintiffs' local insurance business. In view of the broad definition of State power in decisions of this Court supporting that conclusion, plaintiffs fail to present a substantial federal question in urging that New York State lacks power to police their New York State transactions in order to protect resident policyholders.

Osborn v. *Ozlin*, 310 U. S. 53 (1940);

International Harvester v. *Kentucky*, 234 U. S. 579, 586 (1914);

Lumbermen's Insurance Co. v. *Meyer*, 197 U. S. 407, 414, 415 (1905).

The construction of a State statute by the highest Court of the State is binding here and presents no Federal question.

J. Bacon & Sons v. *Martin*, 305 U. S. 380, 381 (1938).

Nor is there sufficient merit (to warrant review here) in the contention that the statutes are invalid because, although assuming a proper basis exists for State regulation, the statutes may have incidental repercussions beyond New York State borders.

Osborn v. *Ozlin*, 310 U. S. 53, 62, 63.

The Court of Appeals did not question the freedom of New York State to erect safeguards about the financial structures of authorized foreign and domestic reciprocal companies insuring local risks, or to require a minimum of local participation in their New York State transactions as a protection to resident policyholders. Their implicit holding lies within principles of State power frequently enunciated by this Court which leave no room for further argument—either on the ground that the statutes herein offend the guarantee of due process of law

Osborn v. *Ozlin*, 310 U. S. 53, 65, 66 (1940);

O'Gorman & Young v. *Hartford Fire Ins. Co.*, 282 U. S. 251 (1931);

German Alliance Ins. Co. v. *Kansas*, 233 U. S. 389 (1913);

or are obnoxious to the equal protection clause of the Fourteenth Amendment.

German Alliance Ins. Co. v. *Kansas*, 233 U. S. 389 (1913);

National Union Fire Ins. Co. v. *Wanberg*, 260 U. S. 71, 75 (1922);
Orient Insurance Co. v. *Daggs*, 172 U. S. 557 (1899).

Dated, August 18, 1942.

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